MacGillivray on Insurance Law 3rd edition page 464 - 465.

There is no evidence that the defendant company themselves were aware of the number of labourers employed and the facts which were withheld were known to and present to their minds at the time when they accepted the risk, and the plaintiffs were not relieved of their obligation to disclose. It is the assured's duty to gather the facts together and present them to the insurers.

Under the Workmen's Compensation Act 1925, the duty of the proposed assured is very extensive. He "may be required to state whether any of the workmen are members of his family, whether any of them possess physical defects and whether all his workmen are to be included in the insurance, if not the reason why all are not included, is to be given" the reason presumably being that the number of employees in common employment may affect the risk of injury. (*Welford Accident Insurance* 2nd edition page 583).

I am of the opinion that under the local Ordinance the duty cast on the insured is no less onerous.

The result flows from a contract *uberrimae fidei*. Cockburn C.J. in *Bates* v. *Hewitt*[1] stated the principle in clear and unequivocal terms "the rule we find established is this; that the person who proposes an insurance should communicate every fact which he is not entitled to assume to be in the knowledge of the other party; the assured is bound to communicate every fact to enable the insurer to ascertain the extent of the risk against which he undertakes to protect the assured . . . and it is also well established law that it is immaterial whether the omission to communicate a material fact arises from intention, or indifference, or a mistake, or from it not being present to the mind of the assured that the fact was one which it was material to make known" because as Mellor J. said "the risk run is really different from the risk understood and intended to be run at the time of the agreement".

In my view the plaintiffs' statement as to the number of their employees was as much a warranty the breach of which avoids the policy as non-disclosure by the auxiliary police inspector of his hazardous occupation in *Leong Chee Yong* v. *China Insurance Company Limited*,[2] decided by Thomson J. (as he then was).

There is also a provision in the policy for compulsory arbitration, but the action has not been resisted by the defendants on that ground.

The plaintiffs' claim stands dismissed with costs.

Claim dismissed.

Solicitors: *T. C. Tang & Co.; Lovelace & Hastings.*

LEE HUP NEO v. REG.

[A. Cr. J. (Rose C.J.) February 24, 1960]

[Singapore — Magistrate's Appeal No. 213 of 1959]

Gaming — Characters lottery — Modus operandi — Expert witness — Evidence of — Common Gaming Houses Ordinance (Cap. 114), s.4(c).

The appellant was convicted of assisting in carrying on a public lottery contrary to section 4(c) of the Common Gaming Houses Ordinance. Counsel for the appellant contended that there was no or no sufficient evidence adduced of the nature or *modus operandi* of the lottery from which it could reasonably be inferred that it was of a nature that fell within the meaning of the definition contained in the Ordinance. Moreover there was no evidence from which it could reasonably be inferred that a certain exhibit (P. 4), alleged to be a record of stakes relating to a characters lottery, in fact related to "a lottery" or "public lottery" within the meaning of the Ordinance.

Held: (1) description by expert witnesses of the *modus operandi* of the characters lottery are no longer necessary except where a Magistrate of his own accord and for his own further enlightenment requires such evidence. In view of the decision of the case of *Lee Seow* v. *Public Prosecutor*, [2] all that is now necessary is a description and explanation by the expert witness of the exhibits and a careful examination and consideration of them by the trial Magistrate in the light of the expert opinion to enable him to form his own independent judgment (*Choo See-Kean* v. *Public Prosecutor* [3] followed);

(2) in the present case although the expert witness did not give a description of the *modus operandi* of the lottery, he did describe and explain the exhibits and this explanation enabled the Court to form an independent judgment as to the matters in issue and in particular, as to the nature of the exhibit P. 4. Having regard to the evidence adduced and the opinion formed upon it by the learned Magistrate, he was entitled to come to the conclusion to which he did and to find the appellant guilty of the offence as charged, the appeal must therefore be dismissed and the conviction and sentence affirmed.

Cases referred to:—

(1) *Lee Yang Hee* v. *R.* [1959] M.L.J. 91.

(2) *Lee Seow* v. *Public Prosecutor* [1958] M.L.J. 245.

(3) *Choo Sec Kean* v. *Public Prosecutor* [1959] M.L.J. 213.

MAGISTRATE'S APPEAL.

H. F. Sheppard for the appellant.

A. W. Ghows (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Rose C.J.: The appellant was convicted of assisting in carrying on a public lottery contra section 4(c) of the Common Gaming Houses Ordinance (Cap. 114).

Learned counsel for the appellant contends that there was no or no sufficient evidence adduced of the nature or *modus operandi* of the lottery from which it could reasonably be inferred that it was of a nature that fell within the mean-

ing of the definition contained in the Ordinance. Moreover there was no evidence from which it could reasonably be inferred that a certain exhibit (P. 4), alleged to be a record of stakes relating to a characters lottery, in fact related to "a lottery" or "public lottery" within the meaning of the Ordinance.

It is true that, as stated in *Lee Yang Hee* v. *Reg.*[1] the position under the law of a characters lottery had been the subject of conflicting judicial decisions until the relatively recent case of *Lee Seow* v. *Public Prosecutor.*[2] The matter, however, is now no longer in doubt. Moreover, as the learned Magistrate points out in his grounds of decision, the procedure that he followed was that approved in the recent Federation case of *Choo See Kean* v. *Public Prosecutor.*[3]

At page 214 Hill J. says:—

"It is now not only settled law that the Character's lottery constitutes a lottery within the meaning of the Common Gaming Houses Ordinance, but the summary Courts have for their guidance descriptions of the operation of these lotteries in judgments of the High Court and recently by the full Court of Appeal in *Lee Seow* v. *Public Prosecutor*. It seems to me therefore that descriptions by expert witnesses of the *modus operandi* of these lotteries are no longer necessary except where a Magistrate of his own accord and for his own further enlightenment requires such evidence. In my view all that is now necessary is precisely what took place in the present case, namely a description and explanation by the expert witness of the exhibits and careful examination and consideration of them by the trial Magistrate in the light of the expert's opinion to enable him to form his own independent judgment."

This passage seems to me to set out the position correctly. In the present case the expert witness did not give a description of the *modus operandi* of the lottery, but, as the learned Magistrate states, he did describe and explain the exhibits. And this explanation enabled the Court to form an independent judgment as to the matters in issue and, in particular, as to the nature of the exhibit P. 4.

The appellant contended in the Court below that she was only "a staker" and was prepared to plead guilty to a charge on that basis. Having regard, however, to the evidence adduced and to the opinion formed upon it by the learned Magistrate, I consider that he was entitled to come to the conclusion to which he did and to find the appellant guilty of the offence as charged.

I was informed from the Bar that the appellant has already paid the fine, and no argument was addressed to me on the subject of sentence, which is manifestly not excessive.

The appeal must therefore be dismissed and the conviction and sentence affirmed.

Appeal dismissed.

Solicitors: *Laycock & Ong.*

SIM MOW KHENG v. PUBLIC PROSECUTOR

[R. Cr. J. (Hepworth J.) August 23, 1959]

[Malacca — Criminal Revision No. 1 of 1959]

Criminal procedure — Disposal of exhibit — Interested parties — Criminal Procedure Code (Cap. 21), ss.434A and 435.

In this case the accused was acquitted and the learned Magistrate, purporting to act under section 435 of the Criminal Procedure Code, ordered that the exhibit be returned to the complainant although there was a rival claimant to it.

Held: (1) the learned Magistrate was not entitled to use the provisions of section 435 because the accused was acquitted and accordingly the exhibit could not be said to be one "regarding which any offence appears to have been used for the commission of any offence";

(2) as there was a rival claimant, the Magistrate should have either made no order or have ordered the exhibit to be handed to the police officer in charge of the proceedings under section 434A, in either of which cases the police could take action as provided in that section.

CRIMINAL REVISION.

G. R. T. Chelvam for the petitioner.

Ali bin Hassan (Sr. Federal Counsel) for the respondent.

Cur. Adv. Vult.

[**Editorial Note:** Section 434A corresponds to section 406A of the States Code: there is no corresponding provision in the Singapore Code. Section 345 corresponds to States Code section 407 and Singapore Code section 430].

Hepworth J.: In this case the Magistrate, purporting to act under section 435 of the Criminal Procedure Code, ordered that an exhibit, a motor-car minus the engine, be returned to the complainant. I do not think he was entitled to use the provisions of this section because the Accused was acquitted and accordingly the Exhibit could not be said to be one "regarding which any offence appears to have been committed or which has been used for the commission of any offence."

There was a rival claimant to the Exhibit and I think the Magistrate should have either made no order or have ordered the Exhibit to be handed to the police officer in charge of the proceedings under section 434A, in either of which cases the police could take action as provided in that section.

Acting in revision therefore I quashed the order of the Magistrate and made no order as to the disposal of the Exhibit, but directed that the police should apply summarily to the Magistrate's Court which determined the case under the proviso to sub-section (2) of section 434A and that the Magistrate should make such order regarding the disposal of the Exhibit as may be proper having given the interested parties an opportunity of being heard.

Order accordingly.